

State of North Dakota

Department of Human Services  
Division of Mental Health & Substance Abuse  
1237 West Divide Avenue, Suite 1C  
Bismarck, ND 58501

Request for Proposal (RFP)

RFP Title: Residential Methamphetamine Treatment Services

RFP Number: 325-05-09-036

Date of Issue: August 18, 2005

Purpose of RFP: ***PILOT RESIDENTIAL PROGRAM FOR THE TREATMENT OF INDIVIDUALS  
WHO ARE CHEMICALLY DEPENDENT ON METHAMPHETAMINE OR OTHER  
CONTROLLED SUBSTANCES***

Offerors are not required to return this form.

Procurement officer: JoAnne Hoesel

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## **SECTION ONE INTRODUCTION AND INSTRUCTIONS**

### **1.01**

#### **Purpose of the RFP**

The Department of Human Services, Division of Mental Health & Substance Abuse, hereafter known as “purchasing agency” is soliciting proposals for a pilot residential program for the treatment of individuals who are chemically dependent on methamphetamine or other controlled substances.

### **1.02**

#### **Contact Person, Telephone, Fax, E-mail**

PROCUREMENT OFFICER: JoAnne Hoesel  
PHONE: 701-328-8924  
FAX: 701-328-8969  
TTY Users call: 1-800-366-6888 (Relay North Dakota)  
E-MAIL: [sohoej@state.nd.us](mailto:sohoej@state.nd.us)

The procurement officer is the point of contact for this RFP. All vendor communications regarding this RFP must be directed to the procurement officer. Unauthorized contact regarding the RFP with other State employees of the purchasing agency may result in the vendor being disqualified, and the vendor may also be suspended or disbarred from the state bidders list.

### **1.03**

#### **RFP Schedule**

This schedule of events represents the State's best estimate of the schedule that will be followed for this RFP. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate RFP schedule is as follows:

- RFP Issued: August 18, 2005
- Deadline for receipt of questions and objections related to the RFP: August 25, 2005
- Responses to questions/RFP amendments (if required): August 31, 2005
- RFP Due Date: September 27, 2005
- Proposal Evaluation Committee evaluation completed by approximately : October 5, 2005
- State issues Notice of Intent to Award a Contract approximately: October 10, 2005
- State issues contract approximately: October 17, 2005
- Contract start: January 1, 2006

### **1.04**

#### **Return Mailing Address and Deadline for Receipt of Proposals**

Offerors must submit six copies of its proposal in a sealed envelope or package.

Envelopes or packages containing proposals must be clearly addressed as described below to ensure proper delivery and to avoid being opened by the State before the deadline for receipt. Envelopes or packages must be addressed as follows:

**DEPARTMENT OF HUMAN SERVICES**  
Division of Mental Health & Substance Abuse  
RFP: RESIDENTIAL METH TREATMENT SERVICES  
RFP Number: 325-05-09-036  
1237 West Divide Avenue, Suite 1C  
Bismarck, ND 58501

Proposals must be received by the purchasing agency at the location specified no later than 3:00 P.M., Central Time on September 27, 2005. Proposals will not be publicly read at the opening.

Proposals may not be delivered orally, by facsimile transmission, by other telecommunication or electronic means. Offerors may fax or electronically transmit signed proposals to a third party who must deliver the proposal to the location indicated above by the date and time designated as the deadline for receipt of proposals.

Offerors assume the risk of the method of dispatch chosen. The State of North Dakota ("State") assumes no responsibility for delays caused by any delivery service. Postmarking by the due date will not substitute for actual proposal receipt by the State. An offeror's failure to submit its proposal prior to the deadline will cause the proposal to be rejected. Late proposals or amendments will not be opened or accepted for evaluation.

**1.05**

**Assistance to Offerors with a Disability**

Offerors with a disability that need an accommodation should contact the procurement officer prior to the deadline for receipt of proposals so that reasonable accommodation can be made.

**1.06**

**Deadline for Receipt of Questions and Objections**

Offerors must carefully review this solicitation, the contract, and all attachments for defects, questionable, or objectionable material. All questions must be in writing and directed to the purchasing agency, addressed to the procurement officer, and cite the subject RFP number. The procurement officer must receive these written requests by the deadline specified in the RFP Schedule of Events to allow issuance of any necessary amendments.

This will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which an award could not be made. Protests based on the content of the solicitation will be disallowed if these faults have not been brought to the attention of the procurement officer, in writing, before the time indicated in the Schedule of Events.

If the question may be answered by directing the questioner to a specific section of the RFP, then the procurement officer may answer the question over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The procurement officer will make this determination. Oral communications are considered unofficial and non-binding on the State. The offeror must confirm telephone conversations in writing.

**1.07**

**Approved Vendor Registration Requirements**

Proposals will be accepted from vendors that are not currently approved vendors on the State's bidders list; however, the successful offeror will be required to become approved prior to award.

To become an approved vendor, offerors must: 1) be registered with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders List Application to the North Dakota Vendor Registry Office. Prospective offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders list. The bidders list that will be used for this solicitation is commodity code 952-05, 952-06, 952-07, 952-21, 952-49, and 952-59.

The Procurement Vendor Database, registration instructions and forms are available on-line at: <http://www.state.nd.us/csd/spo/vendor-resources.htm>. Contact the Vendor Registry Office at 701-328-2773 or [infospo@state.nd.us](mailto:infospo@state.nd.us) for assistance.

The successful offeror must register and become approved within 30 calendar from the date of the Notice of Intent to Award. If an offeror fails to become approved by the time specified by the Procurement Officer, its proposal will be determined to be non-responsive, and its proposal will be rejected.

#### **1.08 Pre-proposal Conference**

No pre-proposal conference will be held for this RFP. Offerors are advised to carefully review the RFP and all attachments and submit all questions to the procurement officer by the deadline indicated for submission of questions in the schedule of events.

#### **1.09 Amendments to the RFP**

If an amendment to this RFP is issued, it will be provided to all offerors that were mailed a copy of the RFP and to those that have requested a copy of the RFP from the procurement officer.

#### **1.10 News Releases**

News releases related to this RFP will not be made without prior approval of the procurement officer or project manager designated by the State.

#### **1.11 Notice Provided**

Notice of this solicitation has been provided in accordance with N.D.C.C. § 54-44.4-09.

The Request for Proposal and any amendments to the RFP will be posted on the following website: <http://www.state.nd.us/humanservices>.

#### **1.12 Letter of Interest**

Vendors interested in receiving any notices related to this RFP are invited to contact the procurement officer with the name of their firm, contact person, mailing address, telephone number, fax number, and e-mail address. The sole purpose of the letter of interest is to provide the purchasing agency with a contact person to receive any notices related to the RFP. Submission of a letter of interest is not a requirement for submitting a proposal.

## **SECTION TWO BACKGROUND INFORMATION**

### **2.01**

#### **Background Information**

Background information concerning this project is as follows:

The pilot project resulted from 2005 Senate Bill 2373. Senate Bill 2373 instructed the Department of Human Services to implement a substance abuse treatment pilot program consisting of up to 20 beds at the North Dakota State Hospital or at a private treatment facility for the treatment and rehabilitation of individuals who are chemically dependent on methamphetamine or other controlled substances. Senate Bill 2373 is attached in Attachment A.

### **2.02**

#### **Budget**

The estimated budget for completion of this project is between \$500,000 and \$1,300,000. Proposal priced at more than \$1,300,000 will be considered non-responsive. It is the intent that up to \$800,000 in other funds comes from third party, client payments, or other sources. The Division will not provide the other funds and should not be considered a source of these funds. It is the expectation that the offeror identify if they have or anticipate other funds and the source of those funds. The other funds must be identified in the budget and project plan.



## SECTION THREE SCOPE OF WORK

### 3.01

#### Scope of Work

##### *Overview*

The Department of Human Services is soliciting proposals for clinically managed low and/or high intensity residential substance abuse treatment for adults who are chemically dependent upon methamphetamine or other controlled substances. The goal of this project is to demonstrate effective treatment services for the individuals participating in this program who are in need of this level of care.

##### *Definitions*

**ASAM:** American Society of Addiction Medicine. The ASAM has developed a method of determining patient placement in substance abuse treatment and is published in the ASAM, second edition, revised.

**METHAMPHETAMINE:** Methamphetamine is an addictive stimulant drug that strongly activates certain systems in the brain. Methamphetamine is chemically related to amphetamine, but the central nervous system effects of methamphetamine are greater.

**OTHER CONTROLLED SUBSTANCES:** means a drug, substance, or immediate precursor in schedules I through V as set out in N.D.C.C section 19-03.1-01.

**CLINICALLY MANAGED LOW-INTENSITY RESIDENTIAL TREATMENT:** This is ASAM Level III.1 and **means** providing an ongoing therapeutic environment for clients requiring some structured support in which treatment is directed toward applying recovery skills, preventing relapse, improving emotional functioning, promoting personal responsibility, and reintegrating the individual into the worlds of work, education, and family life, adaptive skills that may not have been achieved or have been diminished during the client's active addiction. Such programs must offer at least five hours per week of low-intensity treatment the focus of which will be on issues in ASAM dimensions four, five, six, and three, if appropriate mental health services are available onsite or by contractual arrangement. Clinically managed low-intensity residential care is also designed for the client suffering from chronic, long-term alcoholism or drug addiction and affords an extended period of time to establish sound recovery and a solid support system. The residential component of clinically managed low-intensity residential care may be combined with low-intensity outpatient, intensive outpatient, or day treatment. See also N.D.A.C. 79-09.1

**CLINICALLY MANAGED HIGH-INTENSITY RESIDENTIAL SERVICES:** This is ASAM Level III.5 and **means** a therapeutic community or residential treatment center that offers continuous observation, monitoring, and treatment by allied professional staff designed to treat clients who are not sufficiently stable to benefit from outpatient treatment no matter how intensive and who have significant psychological and social problems. A clinically managed high-intensity residential services program does not treat clients that exhibit acute intoxication or withdrawal problems also known as ASAM dimension one; biomedical conditions and complications also known as ASAM dimension two; or emotional, behavioral or cognitive problems also known as ASAM dimension three unless in a dual diagnosis program also known as ASAM level III.5 which requires the availability of twenty-four-hour medical or nursing interventions. See also N.D.A.C. 79-09.1

**SUBSTANCE ABUSE TREATMENT PROGRAMS:** A program that establishes, conducts, or maintains a program that provides substance abuse treatment for persons addicted to alcohol and other drugs. According to North Dakota Administrative Code, section 50-31 a person, partnership, association, corporation, or limited liability company without a license may not establish, conduct, or maintain in this state a substance abuse treatment program for the care of persons addicted to alcohol or other drugs.

**EFFECTIVE TREATMENT:** No single treatment approach is appropriate for all individuals. An effective treatment program involves careful consideration of such things as the setting, length of care, philosophical approach, and client needs. Effective treatment must be individualized and provided for an

adequate period of time. Remaining in substance abuse treatment at the appropriate level of care for an adequate period of time is critical for treatment effectiveness and positive change. Counseling and other behavioral therapies are critical components of effective treatment. Detoxification is only the first stage of substance abuse treatment and by itself does little to change long-term drug use. The involvement of family and friends often positively affects treatment interventions. It is important to match treatment settings, interventions, and services to each individual's particular problems and needs. The ultimate goal of all substance abuse treatment is to enable the individual to achieve lasting abstinence, but the immediate goals are to reduce drug use, improve the patient's ability to function, and minimize the medical and social complications of drug abuse.

**PILOT PROGRAM:** A substance abuse program designed and implemented to demonstrate effective and positive outcomes for a specific population. If the pilot project demonstrates that it has accomplished or has potential to accomplish the original intent, it can serve as a model for future efforts.

**EVIDENCE-BASED PRACTICE (EBP):** Evidence-based practices are those clinical and administrative practices that have been proven to consistently produce specific, intended results. They are intended to address specific problems or symptoms of addictive disorder and produce specifically identified outcomes. EBPs are the integration of best research evidence with clinical expertise and patient values. (Institute of Medicine, 2001)

**BEST-PRACTICES:** Best practices are the best clinical or administrative practice or approach at the moment. (Turning Knowledge into Practice, 2003)

**PROMISING PRACTICES:** Clinical practices for which there is considerable evidence or expert consensus and which show promise in improving client outcomes, but which are not yet proven by the highest or strongest scientific evidence. (Turning Knowledge into Practice, 2003)

#### ***Quality Assurance***

The offeror will be measured on the project reporting elements contained in Attachment 2.

#### ***Directives***

The offeror will provide a pilot program that is a licensed or licensable as a clinically managed -residential addiction treatment program ASAM level 111.1 and/or 111.5 according the ASAM criteria in North Dakota Administrative Code section 75-09.1. Whether the pilot program offers one or both levels of care will be determined by the offeror and detail provided in the program design section of this RFP.

### **3.02**

#### **Facility and Physical Plan**

The offeror will describe the location in North Dakota of the proposed program and how it will be easily accessible to clients statewide and their families. The proposal will demonstrate that the location is properly zoned for this use or could be zoned for this use without delay in implementation of this project. The proposal will provide a description of anticipated community concerns and how they have or will address the concerns to avoid delays in program implementation. A proposed visual description of the program layout including client rooms shall be provided. Treatment services will be provided by the provider and the location identified in the proposal. The Division will not provide workspace for the contractor.

The State will not provide workspace for the contractor.

### **3.03**

#### **Program Design and Reporting**

The offeror will deliver a work plan outlining:

- 1) Who provides what services at what time and place with what outcome (including costs),
- 2) data collection methods,
- 3) treatment model with examples of how it will be implemented,

- 4) staffing patterns,
- 5) how staff will/are trained in this treatment model, and
- 6) how client status is tracked.

The offeror will provide a description of how they will interface with the regional human service centers and other substance abuse programs and achieve step down services for clients no longer needing residential treatment services. The offeror will describe their anticipated referral sources and how those referrals will be prioritized. The offeror will demonstrate how they will report the requirements in Attachment B. The program description will detail the average length of stay the design is based on, and the number of client beds the program will provide, and will identify where the program model falls within the knowledge base of evidence – based practice, best practice or promising practice.

It is the intent that this program provides long-term residential services for individuals dependent upon methamphetamine or other controlled substances. The length of an individual's involvement at this level of care is entirely dependent upon the individual's needs. The offeror shall describe the process used in discharge planning to increase an individual's success in reintegrating back into their community and the use of any case management services.

The offeror will provide assurance that this program adds capacity to the substance abuse treatment system in North Dakota. This means that these additional beds and services are in addition to what would have been available without this legislation. The offeror will provide a current capacity description plus anticipated capacity description for this assurance.

The successful offeror will keep required statistics in a format compatible with Windows XP including Word, Excel, and Access.

The offeror will provide:

- 1) A description of anticipated difficult client behaviors,
- 2) examples of successful management and policies on handling these difficult client behaviors,
- 3) their ability to deal with difficult behavior in clients, and
- 4) any limitations and/or program parameters.

The offeror will describe how they will ensure individuals in this program will receive treatment for their co-occurring (mental health/substance abuse) disorders and what specific methods will be used to address the disorders.

### **3.04**

#### **Experience and Qualifications**

The offeror will exhibit a history of at least three years of providing substance abuse treatment services to individuals chemically dependent to methamphetamine and/or other controlled substances.

In order for offers to be considered responsive, offerors must meet this minimum prior experience requirement. An offeror's failure to meet this minimum prior experience requirement will cause its proposal to be considered non-responsive and its proposal will be rejected.

Persons dependent upon methamphetamine and other controlled substances often exhibit unique and challenging behaviors and it is the intent of the Department to work with offerors who are equipped and prepared to address these issues. The offeror shall explain their policy on handling difficult client behaviors, their ability to deal with difficult client behaviors and any limitations and/or parameters.

The offeror will demonstrate their knowledge of evidence based, best practice, or promising practices for treatment of individuals chemically dependent on methamphetamine or other controlled substances. The offeror will demonstrate a history of working with state commitment laws, criminal justice agencies and families. The offeror will demonstrate knowledge of providing 24-hour treatment services whether through experience of staff employed or through the offeror's direct experience.

Offerors shall include in their work plan, how they will achieve cultural competence within the program.

The offeror shall include three letters of reference attesting to their ability to provide this type of program. This may include letters from previous clients and/or their families.

Offerors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will work on the contract and offerors must also provide a title, resume, and description of work each person will perform.

### **3.05**

#### **Budget and Financial Plan**

The 2005 Legislature earmarked up to \$500,000 for the pilot program and \$800,000 from other funds consisting of third party payments, client payments, and other sources.

The offeror shall provide a current financial statement.

The contractor must include in its budget and financial plan: transportation, lodging, and per diem costs sufficient to pay for up to 3 person(s) to make 4 trips per year to Bismarck, North Dakota. Travel to other locations will not be required.

The offeror shall submit a budget detailing the total budget of the pilot residential program, the number of clients anticipated served, bed capacity, staffing pattern, anticipated expenditures, and revenue. If the offeror identifies other funding availability it shall be included in the total program budget. This other funding will be specifically identified and a letter or letters obligating such funding for this specific purpose, source of the funding.

### **3.06**

#### **Other Fund Requirements**

If the offeror identifies other funds available for this pilot project, the offeror must disclose any fund stipulations in the proposal.

### **3.07**

#### **Contract Schedule**

The approximate contract schedule is as follows:

- Contract start: January 1, 2006
- "Kick off" conference: Mid January 2006
- Contractor submits project progress report: April 15, 2006
- Contractor submits project progress report: July 15, 2006
- Six Month Conference: July 2006
- Contractor submits project progress report: October 15, 2006
- Contractor submits progress report and Legislative report to Department of Human Services: December 2006
- Annual conference: December 2006

- Contractor submits project progress report: January 15, 2007
- Contractor submits project progress report: April 15, 2007
- Project Conference: May 2007
- Contractor submits final report: June 2007

## **SECTION FOUR GENERAL CONTRACT INFORMATION**

### **4.01**

#### **Contract Term and Renewal Options**

The State intends to enter into a contract with an effective date beginning January 1, 2006 and ending June 30, 2007.

This contract may be renewed upon satisfactory completion of the initial contract term. The state reserves the right to execute one option to renew this contract under the same terms and conditions for a period of 24 months. This contract will not automatically renew. The State will provide written notice to the contractor of its intent to renew this contract at least 45 days before the scheduled contract expiration date.

### **4.02**

#### **Standard Contract Provisions**

The successful offeror will be required to sign and submit the contract attached to this RFP (Attachment C). The contractor must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the offeror's proposal. No alteration of these provisions will be permitted without prior written approval from the purchasing agency.

Offerors are instructed to contact the procurement officer in writing by the deadline set for questions with any concerns regarding the contract provisions.

### **4.03**

#### **Proposal as a Part of the Contract**

Part or all of this RFP and the successful proposal may be incorporated into the contract.

### **4.04**

#### **Additional Terms and Conditions**

The State reserves the right to add, delete, or modify terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

### **4.05**

#### **Supplemental Terms and Conditions**

Proposals including supplemental terms and conditions may be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish the State's right's under any contract resulting from the RFP will be considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. After award of contract:

- (a) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- (b) if the State's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

### **4.06**

#### **Contract Approval**

This RFP does not, by itself, obligate the State. The State's obligation will commence when the purchasing agency approves the contract. Upon written notice to the contractor, the State may set a

different starting date for the contract. The State will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the State.

#### **4.07**

##### **Contract Changes - Unanticipated Amendments**

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the project manager designated by the State will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of amendments.

The contractor will not commence additional work until the project director has secured any required State approvals necessary for the amendment and issued a written contract amendment, approved by the purchasing agency.

#### **4.08**

##### **Taxes and Taxpayer Identification**

The contractor must provide a valid Vendor Tax Identification Number as a provision of the contract.

The State is not responsible for and will not pay local, state, or federal taxes. The State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

A contractor performing any contract, including service contracts, for the United States Government, State of North Dakota, counties, cities, school districts, park board or any other political subdivisions within North Dakota is not exempt from payment of sales or use tax on material and supplies used or consumed in carrying out contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties. Contact the North Dakota Tax Department at 701-328-3470 or visit its website at [www.ndtaxdepartment.com](http://www.ndtaxdepartment.com) for more information.

A contractor performing any contract, including a service contract, within North Dakota is also subject to the corporation income tax, individual income tax, and withholding tax reporting requirements, whether the contract is performed by a corporation, partnership, or other business entity, or as an employee of the contractor. In the case of employees performing the services in the state, the contractor is required to withhold state income tax from the employees' compensation and remit to the state as required by law. Contact the North Dakota Tax Department at 701-328-3125 or visit its web site for more information.

#### **4.09**

##### **Proposed Payment Procedures**

The State will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and progress report. No payment will be made until the progress report and the project director has approved invoice.

The State will not make any advanced payments before performance by the contractor under this contract.

#### **4.10**

##### **Contract Personnel**

The project manager designated by the purchasing agency must approve any change of the contractor's project team members named in the proposal, in advance and in writing. Personnel changes that are not approved by the State may be grounds for the State to terminate the contract.

#### **4.11**

##### **Right to Inspect Place of Business**

At reasonable times, the State may inspect those areas of the contractor's place of business that are related to the performance of a contract. If the State makes an inspection, the contractor must provide reasonable assistance.

#### **4.12**

##### **Inspection & Modification**

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project manager designated by the State. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. Should the project manager determine that corrections or modifications are necessary in order to accomplish its intent, the project manager may direct the contractor to make changes. The contractor will not unreasonably withhold changes.

Substantial failure of the contractor to perform the contract may cause the State to terminate the contract. In this event, the State may require the contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

#### **4.13**

##### **Termination for Default**

If the project manager designated by the purchasing agency determines that the contractor has refused to perform the work or has failed to perform the work with diligence as to ensure its timely and accurate completion, the State may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the State's right to termination under the contract provisions of the Service Contract, attached.



**SECTION FIVE  
EVALUATION CRITERIA AND CONTRACTOR SELECTION**

**THE TOTAL NUMBER OF POINTS USED  
TO SCORE THIS CONTRACT IS 100**

**5.01**

**Facility and Physical Plan**

**FIFTEEN PERCENT (15%) of the total possible evaluation points will be assigned to this criterion.**

Proposals will be evaluated against the questions set out below.

- (a) Is the program located in an area accessible to clients statewide and their families?
- (b) Is proposed program location appropriately zoned for this purpose and does offeror provide evidence supporting the appropriate zoning or process of gaining appropriate zoning?
- (c) Does offeror anticipate community concerns and have steps been taken to address potential concerns and/or what will steps will be taken to address concerns and avoid a delay in implementation?
- (d) Does facility layout appear appropriate for purpose of RFP?

**5.02**

**Program Design and Reporting**

**THIRTY PERCENT (30%) of the total possible evaluation points will be assigned to this criterion.**

Proposals will be evaluated against the questions set out below.

- (a) Is program design adequately defined and supported by best practice and/or evidence-based practice for treatment services provided to individuals dependent upon methamphetamine or other controlled substances?
- (b) Is program a licensed addiction treatment program according to North Dakota Administrative Code Article 75-09.1 or licensable according to this administrative code?
- (c) Does offeror explain how reporting for items on Attachment B will be accomplished?
- (d) Does offeror explain their policy on handling the difficult behavior of clients, their ability to deal with difficult behavior in clients, and any limitations and/or parameters?
- (e) Does offeror explain how they will collaborate with the regional human service centers and other substance abuse treatment providers and define how individuals needing this level of care will fit into the continuum of care?
- (f) Does program description appear to meet the description of American Society of Addiction Medicaid (ASAM) criteria level of care III.1 and/or III.5, clinically managed low-intensity residential care or clinically managed high-intensity residential care?
- (g) Does offeror identify anticipated referral sources and describe how those referrals will be prioritized?

- (h) Does offeror explain how their discharge planning process will work?
- (i) Does the offeror provide assurance and a description that this program adds capacity to the substance abuse treatment system in North Dakota?

### **5.03**

#### **Experience and Qualifications**

**THIRTY PERCENT (30%)** of the total possible points will be assigned to this criterion.

Proposals will be evaluated against the questions set out below.

- (a) Does offeror have at least three years of experience in substance abuse treatment services?
- (b) Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the RFP requires?
- (c) Do individuals/program/agency have knowledge of 24-hour treatment services?
- (d) Has agency demonstrated experience in similar programs?
- (e) If a subcontractor is identified or planned, how well does it measure up to the evaluation criteria for the offeror?
- (f) Does the offeror demonstrate an understanding of uniquenesses to individuals dependent upon methamphetamine or other controlled substances?
- (g) Does the offeror demonstrate an understanding of evidence-based practices for addiction services?
- (h) Does the offeror demonstrate an understanding of cultural competence?
- (i) Does the offeror demonstrate an understanding of individualized care and describe how this is applied to their program with examples?
- (j) Does proposal contain letters of reference that appear to appropriately support the agency in providing this level of care?
- (k) Does program description detail how individuals with co-occurring disorders in the program will receive their treatment and what specific methods will be used to address the disorders?

### **5.04**

#### **Budget and Financial Plan**

Proposals will be evaluated against the questions set out below.

**TWENTY-FIVE PERCENT (25%)** of the total possible evaluation points will be assigned to cost.

- (a) Does offeror provide a current financial statement that demonstrates financial stability?
- (b) Does offeror provide a descriptive budget that appears appropriate for a 24-hour residential program?
- (c) Does proposal identify other funding availability and offer a letter or letters obligating such funding for this specific purpose?

- (d) Does proposal identify number of clients to be served, bed capacity, and staffing pattern all within a budget for the specified timeframe?

## **5.06**

### **Demonstrations**

After any discussions for clarifications and the initial evaluation of proposals received, the top two or three offerors whose proposal receive the highest overall scores and are determined to be reasonably susceptible for award may be required to provide an on-site demonstration of the proposed pilot program for the evaluation committee.

The demonstrations will be held at the location of the proposed pilot program of the offerors between October 5, 2005 and October 9, 2005 at a time determined by the Department of Human Services.

Offerors will be responsible for all costs associated with the providing the demonstration.

## **5.07**

### **Oral Presentations**

After any discussions for clarifications and the initial evaluation of proposals received, offerors whose proposal receive the highest scores and are determined to be reasonably susceptible for award may be required to make an oral presentation of the proposed pilot program for the evaluation committee. The presentations will be held between October 5, 2005 and October 9, 2005 at a time determined by the Department of Human Services.

Offerors will be responsible for all costs associated with the providing the demonstration.

## **5.08**

### **Site Inspection Of Offeror's Facility**

The State may conduct on-site visits to the offeror's firm or offeror's customer where comparable service is being performed to evaluate the offeror's capacity to perform the contract. An offeror must agree, at risk of being found non-responsive and having its proposal rejected, to provide the State reasonable access to relevant portions of its work sites. Individuals designated by the purchasing agency will conduct the site inspection at the State's expense.

## **SECTION SIX PROPOSAL FORMAT AND CONTENT**

### **6.01**

#### **Proposal Format and Content**

The State discourages overly lengthy and costly proposals; however, in order for the State to evaluate proposals fairly and completely, offerors must follow the format set out in this RFP and provide all information requested.

### **6.02**

#### **Introduction**

Proposals must include the complete name and address of offeror's firm and the name, mailing address, and telephone number of the person the State should contact regarding the proposal.

Proposals must confirm that the offeror will comply with all provisions in this RFP. The proposal must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota).

Proposals must be signed by a company officer empowered to bind the company. An offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

### **6.03**

#### **Facility and Physical Plan**

Offerors must provide a comprehensive response to the facility and physical plan Section 3.02. Responses must be in the same sequence as they appear in Section 3.02. Offerors must provide supporting narrative and documentation when required in response to the requirements of this section.

### **6.04**

#### **Program Design and Reporting**

Offerors must provide a comprehensive response to the program design and reporting requirements specified in Section 3.03. Responses must be in the same in the same sequence as they appear in Section 3.03. Offerors must provide supporting narrative and documentation when required in response to the product support requirements.

### **6.05**

#### **Experience and Qualifications**

Offerors must describe the experience of their firm in completing similar projects. Additionally, offerors must provide information specific to the personnel assigned to accomplish the work called for in this RFP. Offerors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will actually work on the contract and provide the following information about each person listed:

- (a) title;
- (b) resume;
- (c) description of the type of work the individual will perform; and

If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

Offerors must provide three reference names and phone numbers for similar projects the offeror's firm has completed. The State reserves the right to contact any references provided by the offeror. Offerors are invited to provide letters of reference from previous clients.

Offerors must provide a narrative or organizational chart that describes the organization of the project team. The organizational chart must illustrate the lines of authority, designate the individual responsible and accountable for the completion of each component and deliverable of the RFP, and indicate where the work will be performed.

#### **6.06**

##### **Budget and Financial Plan**

The offeror shall provide financial information in such a manner that a determination about the stability and financial strength of the organization can be reasonably formulated. This must include but not be limited to company size, organization, date of incorporation, ownership, number of employees, revenues for the last fiscal year, audited financial statements for the most recent 3 years, and other information which is relevant to this RFP. A current Dun and Bradstreet Report would fulfill this requirement. An Annual Report can be used as verification of financial status provided it contains at a minimum a Compiled Income Statement and Balance Sheet verified by a Certified Public Accounting firm. The State reserves the right to contact the accounting firm if questions arise.

Disclose any and all judgments, pending or expected litigation, or other real potential financial reversals, which might materially affect the viability or stability of the offeror's organization; or certify that no such condition is known to exist.

A confidentiality statement may be included if this portion is considered non-public information. The State may request reports on financial stability from independent financial rating services in order to further substantiate stability.

#### **6.08**

##### **Required Enclosures**

Offerors must provide all documents, samples, or other information specifically required in this RFP.

## **SECTION SEVEN STANDARD PROPOSAL INFORMATION**

### **7.01**

#### **Authorized Signature**

An individual authorized to bind the offeror to the provisions of the RFP must sign all proposals.

### **7.02**

#### **State Not Responsible for Preparation Costs**

The State will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

### **7.03**

#### **Conflict of Interest**

Offerors must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota). The State reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the offeror's proposal. The State's determination regarding any questions of conflict of interest is final.

### **7.04**

#### **Offeror's Certification**

By signature on the proposal, an offeror certifies that it complies with:

- a) the laws of the State of North Dakota;
- b) North Dakota Administrative Code;
- c) all applicable local, state, and federal laws, code, and regulations;
- d) the applicable portion of the Federal Civil Rights Act of 1964;
- e) the Equal Employment Opportunity Act and the regulations issued by the federal government;
- f) the Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
- g) all terms, conditions, and requirements set forth in this RFP;
- h) a condition that the proposal submitted was independently arrived at, without collusion;
- i) a condition that the offer will remain open and valid for the period indicated in this solicitation; and
- j) a condition that the firm and any individuals working on the contract do not have a possible conflict of interest (e.g. employed by the State of North Dakota).

If any offeror fails to comply with the provisions stated in this paragraph, the State reserves the right to reject the proposal, terminate the contract, or consider the contractor in default.

### **7.05**

#### **Offer Held Firm**

Proposals must remain open and valid for at least 90 days from the deadline specified for submission of proposals. In the event award is not made within 90 days, the State will send a written request to all offerors deemed susceptible for award asking offerors to hold their price firm for a longer specified period of time.

## **7.06**

### **Amendments to Proposals and Withdrawals of Proposals**

Offerors may amend or withdraw proposals prior to the deadline set for receipt of proposals. No amendments will be accepted after the deadline unless they are in response to the State's request. After the deadline, offerors may make a written request to withdraw proposals and provide evidence that a substantial mistake has been made. The procurement officer may permit withdrawal of the proposal upon verifying that a substantial mistake has been made, and the State may retain the offeror's bid bond or other bid type of bid security, if one was required.

## **7.07**

### **Alternate Proposals**

Offerors may submit only one proposal for evaluation.

Alternate proposals (proposals that offer something different than what is requested) will be rejected.

## **7.08**

### **Subcontractors**

Subcontractors may be used to perform work under this contract. If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

If a proposal with subcontractors is selected, the offeror must provide the following information concerning each prospective subcontractor within five working days from the date of the State's request:

- (a) complete name of the subcontractor;
- (b) complete address of the subcontractor;
- (c) type of work the subcontractor will be performing;
- (d) percentage of work the subcontractor will be providing;
- (e) evidence, as set out in the relevant section of this RFP, that the subcontractor is registered and, if applicable, holds a valid North Dakota business license; and
- (f) a written statement, signed by each proposed subcontractor, that clearly verifies that the subcontractor is committed to render the services required by the contract.

An offeror's failure to provide this information, within the time set, may cause the State to consider its proposal non-responsive and reject it. The substitution of one subcontractor for another may be made only at the discretion and prior written approval of the State's procurement officer or project manager designated by the State.

Any subcontractor must certify that it complies with section 7.04 Offeror's Certification.

## **7.09**

### **Joint Ventures**

Joint ventures are acceptable. If submitting a proposal as a joint venture, the offeror must submit a copy of the joint venture agreement that identifies the principles involved and its rights and responsibilities regarding performance and payment.

Any joint venture agreement must confirm compliance with section 7.04 Offeror's Certification.

## **7.10**

### **Disclosure of Proposal Contents and Compliance with North Dakota Open Records Laws**

All proposals and other material submitted become the property of the State and may be returned only at the State's option. All proposals and related information, including detailed cost information, are exempt records and will be held in confidence until an award is made, in accordance with N.D.C.C. § 54-44.4-10(2).

Offerors may make a written request that trade secrets and other proprietary data contained in proposals be held confidential. Material considered confidential by the offeror must be clearly identified, and the offeror must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information.

<http://www.ag.state.nd.us/OpenRecords/ORM.htm>

After award, proposals will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, the procurement officer, in consultation with the Office of the Attorney General, will determine whether the information is an exception to the North Dakota open records law, and the information will be processed appropriately.

## **7.11**

### **Evaluation of Proposals**

All proposals will be reviewed to determine if they are responsive to the requirements of this solicitation. The procurement officer or an evaluation committee will evaluate responsive proposals. The evaluation will be based solely on the evaluation factors set forth in this RFP. The evaluation will consider information obtained subsequent to any discussions with offerors determined to be reasonable for award and any demonstrations, oral presentations, or site inspections, if required in this RFP.

## **7.12**

### **Right of Rejection**

The State reserves the right to reject any proposals, in whole or in part. Proposals received from debarred or suspended vendors will be rejected. The procurement officer may reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not qualify the proposal nor restrict the rights of the State. If an offeror does so, the procurement officer may determine the proposal to be non-responsive, and the proposal may be rejected.

The procurement officer may waive minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are insignificant, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision,

The State reserves the right to reject any proposal determined to be not responsive, and to reject the proposal of an offeror determined to be not responsible. The State also reserves the right to refrain from making an award if it determines it to be in its best interest.



### **7.13**

#### **Clarification of Offers**

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the proposal evaluation committee are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Clarifications may not result in a material or substantive change to the proposal. The initial evaluation may be adjusted because of a clarification under this section.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

### **7.14**

#### **Discussions and Best and Final Offers**

The State may conduct discussions or request best and final offers with offerors that have submitted proposals determined to be reasonably susceptible for award. The State is not obligated to do so, therefore, vendors should submit their best terms (cost and technical). The purpose of these discussions is to ensure full understanding of the requirements of the RFP and the offeror's proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the proposal evaluation committee. If modifications to the proposal are made as a result of these discussions, the modifications must be put in writing.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for discussions so that reasonable accommodation can be made.

### **7.15**

#### **Preference Laws**

The preference given to a resident North Dakota offeror will be equal to the preference given or required by the state of the nonresident bidder. A "resident" North Dakota bidder, offeror, seller, or contractor is one that has maintained a bona fide place of business within this State for at least one year prior to the date on which a contract was awarded. For a listing of state preference laws, visit the following website: [http://tpps.das.state.or.us/purchasing/pref-law/reciprocal\\_detail.php](http://tpps.das.state.or.us/purchasing/pref-law/reciprocal_detail.php) or contact the North Dakota State Procurement Office at 701-328-2683.

### **7.16**

#### **Contract Negotiation**

After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, will be within the scope of the request for proposals and limited to those items that would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the State may terminate negotiations and negotiate with the offeror of the next highest-ranked proposal.

If contract negotiations are commenced, they will be held:

**Prairie Hills Plaza  
Division of Mental Health & Substance Abuse  
237 West Divide Avenue, Suite 1C  
Bismarck, ND 58501**

If contract negotiations are held, the offeror will be responsible for all cost including its travel and per diem expenses.

### **7.17**

#### **Notice of Intent to Award - Offeror Notification of Selection**

After the completion of contract negotiation the procurement officer will issue a written Notice of Intent to Award and send copies to all offerors. The Notice of Intent Award will set out the names and addresses of all offerors and identify the proposal selected for award. The scores and placement of other offerors will not be part of the Notice of Intent to Award.

The successful offeror named in the Notice of Intent to Award is advised not to begin work, purchase materials, or enter into subcontracts relating to the project until both the successful offeror and the State sign the contract.

### **7.18**

#### **Protest and Appeal**

North Dakota law provides that an interested party may protest a solicitation.

If an interested party wishes to protest the content of this RFP, the protest must be received, in writing, by the procurement officer at least seven calendar days before the deadline for receipt of proposals.

An interested party may protest the award or proposed award of a contract.

If an offeror wishes to protest the award of a contract or proposed award of a contract, the protest must be received, in writing, by the procurement officer within seven calendar days after the date the Notice of Intent to Award was issued.

## ATTACHMENT A

### SENATE BILL 2373

#### **METHAMPHETAMINE TREATMENT PILOT PROJECT**

AN ACT to provide for the implementation of a pilot program for the treatment of individuals who are chemically dependent on methamphetamine or other controlled substances; to provide for a report to the legislative assembly; to provide an appropriation; and to provide an expiration date.

#### **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. Substance abuse treatment pilot program.** The department of human services shall implement a substance abuse treatment pilot program consisting of up to twenty beds at the state hospital or at a private treatment facility through a grant as determined by the department for the treatment and rehabilitation of individuals who are chemically dependent on methamphetamine or other controlled substances. Prior to establishing the program, the department shall issue a statewide request for proposal seeking providers for this program.

**SECTION 2. REPORT TO LEGISLATIVE ASSEMBLY.** The department of human services shall collect statistics regarding the operation of the pilot program, track participants in the pilot program, and provide a report to the sixtieth legislative assembly detailing the number of participants in the pilot program, the cost of the pilot program, relapse statistics, and other data concerning the effectiveness of the pilot program provided for under section 1 of this Act.

#### **SECTION 3. APPROPRIATION - ADDITIONAL FUNDS - EMERGENCY**

**COMMISSION AND BUDGET SECTION APPROVAL.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, and from other funds consisting of third party, client payments, and other sources, the sum of \$800,000, to the department of human services for the costs associated with establishing the pilot program at the state hospital or at a private treatment facility for the treatment of individuals who are chemically dependent on methamphetamine or other controlled substances, for the biennium beginning July 1, 2005, and ending June 30, 2007. The funds appropriated under this section may not be used for the cost of any facility construction or renovation project. If additional federal or other funds become available for the treatment services provided for under this section, the department of human services may seek emergency commission and budget section approval to receive and spend the funds for treatment services, excluding construction or renovation projects.

**SECTION 4. EXPIRATION DATE.** Section 1 of this Act is effective through June 30, 2007, and after that date is ineffective.

## **ATTACHMENT B**

### **PROGRAM REPORTING REQUIREMENTS**

#### **DATA TO BE COLLECTED BY OFFEROR FOR EACH CLIENT ADMITTED TO PROGRAM.**

- Employment Status
  - Living Status
  - Criminal Justice Involvement
  - Alcohol Use/Abstinence
  - Other Drug Use
  - Infectious Diseases
  - Social Support of Recovery
  - Retention
  - Diagnostic Information
  - ASAM Level of Care
- Data are collected at intake, again in 3, 6 and then in 12 months and at discharge.
- Client satisfaction surveys are done on a yearly basis.
- Evaluation outcomes will also address the effect of treatment on participants, context of the outcomes and steps leading up to the outcomes, any milestones, benchmarks and enduring changes. Over time the effects of the project will demonstrate durability of changes. Clearly, cultural factors may affect outcomes. The evaluators will be sensitive to cultural differences among clients.

#### **Program Data Collection**

- Process evaluation will include a review of proposed project with the implementation steps and the actual project.
- Evaluation will need to explicate specific features of the program in order to identify what elements were most effective.
- Both summative evaluations, looking at client data and success or challenges within the project and formative evaluations, looking at weekly issues, concerns or trends will be done. Funds can be used to support data collection, analysis and reporting.
- Data are used to evaluate the programs, for planning and to ensure adequate services.

## ATTACHMENT C

CONTRACT#

### COST REIMBURSEMENT AGREEMENT

WHEREAS, the State of North Dakota acting through its North Dakota Department of Human Services, Division of Mental Health and Substance Abuse, (State) has determined the services referred to in the paragraph below entitled "Scope of Service" should be purchased; and

WHEREAS, [PROVIDER], (Provider) proposes to provide those services;

NOW, THEREFORE, the State and Provider enter into the following:

I. TERM OF THE AGREEMENT

The term of this agreement shall be from the \_\_\_\_ day of \_\_\_\_\_ 200\_\_ through the \_\_\_\_ day of \_\_\_\_\_ 200\_\_. However, this agreement may be terminated with or without cause by either party giving the other party thirty (30) days prior written notice.

II. SCOPE OF SERVICE

III. COMPENSATION

The State, upon written request from the Provider, shall pay the Provider a monthly amount. Payment shall be limited to the actual allowable costs incurred, as defined by the OMB Circular cited under Section VIII of this agreement, while performing the scope of service. Total payment under the terms of this agreement shall not exceed \$\_\_\_\_\_. **Final payment requests shall be submitted to the State no later than fifteen (15) days after the expiration of this agreement. No payment will be made until the Certification in the Provider's OMB Circular Informational Guide, which is attached by reference and made a part of this agreement, is appropriately signed and returned.**

At the end of the contract period, a settlement shall be made based on actual allowable costs not to exceed the terms of this agreement.

IV. PROVIDER'S UNDERSTANDING OF TERM OF FUNDING

The Provider understands that this agreement is a one-time agreement, and acknowledges that it has been furnished no assurances that this agreement may be extended for periods beyond its termination date.

V. PROVIDER ASSURANCES

This agreement shall be construed according to the laws of the State of North Dakota. In connection with the furnishing of supplies or performance of work under this agreement, persons who contract with or receive funds to provide services to the North Dakota Department of Human Services are obligated and agree to comply with all local, state and federal laws, regulations and executive orders related to the performance of this agreement including but not limited to the

following: Fair Labor Standards Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the North Dakota Human Rights Act, the Drug Abuse Prevention Treatment and Rehabilitation Act of 1970, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Alcohol, Drug Abuse and Mental Health Administration Reorganization Act of 1992, the Pro-children Act of 1994, and the Drug-free Workplace Act of 1988. Questions regarding the provision of services according to these Acts may be directed to Krista L. Andrews, Contract Officer, North Dakota Department of Human Services, Judicial Wing, State Capitol, 600 E. Boulevard, Bismarck, ND 58505 (701-328-2311 or 701-328-3975 TDD).

The Provider certifies by signing this agreement that neither the Provider, Subcontractor, nor their principals, are presently debarred, declared ineligible or voluntarily excluded from participation in transactions with the State or Federal Government by any Department or Agency of the Federal Government.

Provider shall be an approved Vendor with the Office of Management and Budget within the State of North Dakota as required by NDCC § 54-44.4-09.

VI. AUTHORITY TO CONTRACT

The Provider shall not have the authority to contract for or on behalf of or incur obligations on behalf of the State. However, the Provider may subcontract with qualified providers of services provided that any such subcontract shall acknowledge the binding nature of this agreement, and incorporate this agreement, together with its attachments as appropriate. The Provider agrees to be solely responsible for the performance of any subcontractor.

VII. INDEPENDENT ENTITY

The Provider shall perform as an independent entity under this agreement. The Provider, its employees, agents, or representatives are not employees of the State for all purposes, including but not limited to, the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workers' Compensation Act. No part of this agreement shall be construed to represent the creation of an employer/employee relationship. The Provider will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Provider's activities and responsibilities under this agreement.

VIII. EXPENSE ALLOWABILITY

It is agreed that expense allowability will be determined using OMB Circular A-122, *Cost Principles for Nonprofit Organizations*, which is attached by reference and made a part of this agreement. OMB Circular A-122 can be obtained from the State's Fiscal Administration Division upon request.

IX. RETENTION AND ACCESSIBILITY OF RECORDS

The Provider agrees to retain financial records for a period of three years from the date of submission of the final expenditure report or, if subject to audit, until such audit is completed and closed, whichever occurs later. Program records shall be maintained for a period of six years or if subject to audit, until such audit is completed and closed, whichever occurs later. These records shall be made available for review by the State, or its agents upon request at any time during normal business hours. Further, the Provider agrees to submit a contract closure report to the Fiscal Administration Division of the Department of Human Services within ninety (90) days after the contract end date.

X. NONPERFORMANCE

Failure by the Provider to perform the term of this agreement shall constitute a breach of contract, and shall result in the immediate termination of the agreement. In the event of a termination for breach by the Provider, the State may retain, as liquidated damages, any payment to be made under this agreement which remains unpaid at the time of the breach, and may also recover from the Provider, those amounts already paid for individual items of work which are incomplete at the time of the breach.

However, should a breach by the Provider be caused by circumstances, beyond the control of the Provider, and no fault of its own, so as to render the agreement impossible of performance by the Provider, then the agreement shall be terminated. In the event of a breach by the Provider, in such circumstances, the State may set off, against any liability or obligations owed to the Provider, under this agreement or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach, but shall not be entitled to liquidated damages.

The State shall give written notice, to the Provider, of the termination, which notice shall specify the effective date thereof.

XI. TERMINATION OF AGREEMENT FOR INADEQUACY OF FUNDS

It is agreed that in the event appropriations to the Department of Human Services are not obtained and continued at a level sufficient to allow for payments to the Provider, for the services identified in Paragraph II, the obligations of each party hereunder may be terminated at the option of the State, provided that any such termination shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

XII. CONTINGENT LIABILITY

During the term of this agreement, and for three years thereafter, the Provider agrees to reimburse the State for any claims, submitted by the State for federal financial participation in the cost of this agreement, which are disallowed by any federal agency for a failure, on the part of the Provider, to comply with the terms and conditions of this agreement, the applicable provisions of any federal or state statutory or regulatory provision which govern the source of funding. The State agrees to give the Provider prompt written notice of any disallowance of claims subject to reimbursement by the Provider. Any amount disallowed in the manner and for the reasons described above, and noticed in the manner prescribed above,

shall be considered a debt owing to the State and action may be brought by the State thereon in any manner prescribed by law.

XIII. INDEMNITY

Provider agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (North Dakota), from any and all claims of any nature, including all costs, expenses, and attorneys' fees, which may in any manner result from or arise out of this agreement, except for claims resulting from or arising out of North Dakota's sole negligence. The legal defense provided by Provider to North Dakota under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for North Dakota is necessary. Provider also agrees to defend, indemnify, and hold North Dakota harmless for all costs, expenses, and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after termination of this agreement.

XIV. INSURANCE

A. **Required Coverages.** Provider shall secure and keep in force during the term of this agreement, from insurance companies authorized to do business in North Dakota, the following insurance coverages covering the Provider for any and all claims of any nature which may in any manner arise out of or result from this agreement:

- 1) Commercial general liability, including contractual coverage, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Professional errors and omissions including a three (3) year "tail coverage endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate. In the alternative to obtaining the tail coverage endorsement, Provider agrees to continue the insurance in place a minimum of three (3) years following completion of the work specified in this agreement.
- 3) Automobile liability, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 4) Workers' compensation coverage meeting all North Dakota statutory requirements.

B. **General Insurance Requirements.** The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Provider. The amount of any deductible or self-retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form, and must be placed with insurers rated "A" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. The policies shall be in form and terms approved by the State. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which it is excess.



- 3) North Dakota will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Provider in excess of the minimum requirements set forth above. The duty to indemnify North Dakota under this agreement shall be not be limited by the insurance required in this agreement.
- 4) North Dakota shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insureds. North Dakota shall have all the rights and coverages as Provider under said policies. The additional insured endorsement for the commercial general liability policy shall be written on a form equivalent to the ISO 1985 CG 20 10 form, or such other form as approved by North Dakota, and shall not limit or delete North Dakota's coverage in any way based upon North Dakota's acts or omissions.
- 5) The insurance required in this agreement, through a policy to endorsement, shall include:
  - a) a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against North Dakota;
  - b) a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State representative;
  - c) a provision that any attorney who represents North Dakota under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required by N.D.C.C. § 54-12-08;
  - d) a provision that Provider's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by North Dakota and that any insurance, self-insurance or self-retention maintained by North Dakota shall be excess of the Provider's insurance and shall not contribute with it;
  - e) cross liability/severability of interest coverage for all policies and endorsements.
- 6) The legal defense provided to North Dakota under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for North Dakota is necessary.
- 7) Provider shall furnish a certificate of insurance and, if requested, a copy of the insurance policy and all its endorsements, including the additional insured endorsement, to the undersigned State representative prior to commencement of this agreement.
- 8) Failure to provide insurance as required in this section is a material breach of contract entitling State to terminate this contract at any time effective upon delivery of notice to the Provider.

XV. NOTICE

Any notice required or permitted to be given pursuant to this agreement may be personally served on either party by the party giving such notice, or may be served by certified mail, return receipt requested, addressed to the executive office of the party upon whom service is made.

XVI. INTEGRATION AND MODIFICATION

This contract constitutes the entire agreement between the Provider and the State. No alteration, amendment, or modification in the provisions of this agreement shall be effective unless it is reduced to writing, signed by the parties and attached hereto.

XVII. COLLATERAL CONTRACTS

Where there exists any inconsistency between this agreement and other provisions of collateral contractual agreements which are made a part of this agreement by reference or otherwise, the provisions of this agreement shall control.

XVIII. APPLICABLE LAW

This agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

XIX. ASSIGNMENT

Neither Party shall assign this agreement and rights without the written approval of the other Party. Such approval shall not be unreasonably withheld. This agreement shall be equally binding on the respective Parties, their successors and assigns.

XX. CONFIDENTIAL INFORMATION

The Provider agrees not to use or disclose any information it receives from the State under this agreement that is confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this agreement or as authorized in advance by the State. The State agrees not to disclose any information it receives from the Provider which the Provider has previously identified as confidential and which the State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code § 44-04-18. The duty of the State and the Provider to maintain confidentiality of information under this section continues beyond the term of this agreement, including any extensions or renewals.

XXI. OWNERSHIP OF WORK PRODUCT

All work product, equipment or materials created or purchased under this agreement belong to the State and must be delivered to State at State's request upon termination of this agreement. Provider agrees that all materials prepared under this agreement are "works for hire" within the meaning of copyright laws of the United States and assigns to the State all rights and interests Provider may have in the materials it prepares under this agreement, including any right to derivative use of the material. Provider shall execute all necessary documents to

enable the State to protect its rights under this section. Use of work product or materials for purposes other than the scope of this agreement must be approved in writing by the State.

XXII. COMPLIANCE WITH PUBLIC RECORDS LAWS

Provider understands that, except for disclosures prohibited in Section XX, the State must disclose to the public upon request any records it receives from Provider. Provider further understands that any records which are obtained or generated by the Provider under this agreement, except for records that are confidential under Section XX, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Provider agrees to contact the State immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request.

XXIII. ATTORNEY FEES

In the event a lawsuit is instituted by the State to obtain performance due to any kind under this agreement, and the State is the prevailing party, Provider shall, except when prohibited by N.D.C.C. § 28-26-04, pay the State's reasonable attorney fees and costs in connection with the lawsuit.

XXIV. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

The State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. The State does not waive any right to a jury trial.

XXV. SPOILIATION – NOTICE OF POTENTIAL CLAIMS

Provider shall promptly notify State of all potential claims which arise from or result from this agreement. Provider shall also take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the State the opportunity to review and inspect the evidence, including the scene of an accident.

[PROVIDER]

By \_\_\_\_\_

Its \_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
Provider's Federal Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

By \_\_\_\_\_  
CAROL K. OLSON  
EXECUTIVE DIRECTOR

By \_\_\_\_\_  
KRISTA L. ANDREWS  
CONTRACT OFFICER